

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 3:17-cr-00438-JO
)	
v.)	
)	
RICHARD VERNON CARDOZA,)	OPINION AND ORDER
)	
)	
Defendant.)	

JONES, J.

Defendant Richard Vernon Cardoza (Cardoza), age 59, moves to reduce his sentence under 18 U.S.C. § 3582(c)(1)(A)(i), requesting that his sentence be reduced to time served. ECF No. 76. This is his second motion for compassionate release, coming thirteen months after his original motion was denied. *United States v. Cardoza*, No. 3:17-cr-00438, 2021 WL 932017 (D. Or. March 11, 2021). Cardoza has served less than 50% of his 84-month sentence for distributing child pornography. Def.’s Reply Br., ECF No. 85 at 3. He asserts that his age, diagnosed medical conditions (obesity, hypertension, gastro-esophageal reflux disease (GERD), and asthma), undiagnosed medical conditions (sleep apnea, “renal insufficiency vs. chronic renal failure,” and diabetes), and the conditions at FCI Terminal Island, where Cardoza is housed, make him particularly vulnerable to the novel coronavirus pandemic. He asks to be released to

his elderly, widowed mother's home so he can assist with her care. The government opposes his motion. Based on the following, I DENY the motion.

Since his first motion for compassionate release, nothing much has changed for Cardoza. The records of his most recent medical appointments indicate that he is still barely obese with a BMI of 30.4. ECF No. 84-1 at 14, 24. He is taking medications to treat his asthma, hypertension, and GERD, which are well-controlled. (“[D]oing well” on medications (Albuterol and Beclomethasone inhaler) for asthma and “denies wheezing, shortness of breath, or cough”; “doing well” on medication (HCTZ) for hypertension and “denies chest pain, palpitations, and shortness of breath”; and “doing well” on medication (Omeprazole) for GERD and “denies nausea, vomiting and black tarry stools”.) ECF 86-1 at 16. In March, 2021, I held that these medical conditions did not rise to the level of “extraordinary and compelling” reasons warranting compassionate release, and using the same analysis now, see no reason to change my mind. *See United States v. Cardoza*, No. 3:17-cr-00438, 2021 WL 932017 (D. Or. Mar. 11, 2021). The only changes in Cardoza's documented medical history are that he received a third Pfizer-BioNTech COVID vaccine on January 5, 2022 and had a colonoscopy (negative for polyps). ECF No. 86-1 at 22, 30.

As for Cardoza's claims regarding sleep apnea, renal insufficiency, and diabetes, these conditions are not confirmed in any medical records filed by him or the government.¹ Undiagnosed illnesses do not support his claim of extraordinary or compelling reasons warranting compassionate release.

Cardoza asserts that the conditions at FCI Terminal Island, where he is housed, are unsafe. Currently, the BOP reports no inmates and six staff members at Terminal Island

¹ A lab test showed an elevated hemoglobin count that puts him at increased risk for diabetes, but Cordoza has not been diagnosed with diabetes. ECF No. 86-1 at 21.

diagnosed with COVID. COVID-19 Cases, <https://www.bop.gov/coronavirus/> (June 27, 2022). The inmate population at Terminal Island is largely vaccinated, as are the staff. COVID-19 Vaccine Implementation, <https://www.bop.gov/coronavirus/index.jsp> (June 27, 2022). Based on these statistics, the conditions at Terminal Island do not appear to be unsafe. As for Cardoza's family circumstances, he contends that his release would allow him to provide care for his recently widowed mother who is in her nineties. Cardoza does not state that she has no other caregivers, only that "family circumstances include the need to provide care." Def's Reply B. ECF No. 85 at 2. Considering the totality of the circumstances, I do not find "extraordinary and compelling" reasons to justify compassionate release.

In addition to there being no extraordinary or compelling reasons justifying compassionate release, Cardoza has not shown that he no longer poses a danger to the community. Cardoza plead guilty to distribution of child pornography. PSR ¶ 1. While Cardoza has taken many educational classes while in prison, he has not completed any sex offender treatment. Prior to incarceration, he began treatment but did not complete it. At sentencing, I recommended Cardoza be placed at FCI Lompoc, where he could obtain sex offender treatment. Unfortunately, he got placed at FCI Terminal Island and, to date, has received no sex offender treatment in prison. ECF No. 76 at 25. While he is not at fault for not receiving treatment, releasing him without him completing sex offender treatment would be ill-advised.

Cardoza has not demonstrated that his underlying conditions—in combination with the possibility of a COVID-19 infection—provide extraordinary and compelling reasons to grant his motion for compassionate release. A reduction in Cardoza's sentence is not warranted after considering the sentencing factors under U.S.S.G §3553(a), as he has not shown that he is no longer a danger to the community.

Cardoza's Motion to Modify Sentence Pursuant to 18 U.S.C. § 3582(c)(1) (ECF No. 76)
is DENIED.

IT IS SO ORDERED.

Dated the 28th of June, 2022.

/s/ Robert E. Jones
Robert E. Jones
Senior United States District Judge